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Torts - Interference with Contractual Relations - including Breach of Contract

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to national security should be readily admissible in federal courts. The importance of national survival needs no elaboration. With this exception, the *Nardone Case* represents not only good law but good policy. The evils which free admissibility would correct (i.e. the escape of criminals) would be overbalanced by new evils resulting from encroachment upon individual privacy. As observed in the dissenting opinion of the *Goldstein Case,* every reasonable prohibition calculated to destroy the menace of wiretappng should be adopted, even though some criminals escape.

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TORTS—INTERFERENCE WITH CONTRACTUAL RELATIONS—INCLUDING BREACH OF CONTRACT.—In the year 1853 one Lumley entered into a contract with one Johanna Wagner who agreed to perform for a certain term at Lumley's theatre and not to sing or use her talents elsewhere without Lumley's consent. Before the time of performance one Gye induced Miss Wagner to breach her contract of which he had knowledge. Lumley brought an action in tort against Gye alleging these facts and praying for the special damages which he had suffered. The defendant Gye demurred to the complaint but the English court overruled the plea and entered judgment for the plaintiff saying: "He who maliciously procures a damage to another by violation of his right ought to be made to indemnify; and that, whether he procures an actionable wrong or a breach of contract."[1] Thus was born the "doctrine of *Lumley v. Gye*", setting forth in definitive form the tort of inducing breach of contract,[2] which has since been accepted in England[3] and in the vast majority of jurisdictions in the United States.[4]

Originally the action appeared as a remedy available to the Roman *pater-familias* for damages sustained by him due to violence committed on his family or slaves. England eventually adopted this type of action as a part of the common law, and in 1350 when the Black Death left a great shortage of labor, created an additional remedy by instituting the Statute of Labourers. Under that act a penalty was provided to prevent a laborer from running away, and

1. 2 El. & Bl. 216 (Q.B. 1853).
2. See Prosser, Torts 977 (1941).
3. See, *e.g.*, Bowen v. Hall, 6 Q.B.D. 333, 50 L.J.Q.B. 305 (1881).
4. See Prosser, *supra* note 2, at 979.

a remedy given to the master against anyone who received or retained him.[5] Courts in the United States were at first reluctant to recognize the tort of inducing breach of contract except in cases of personal services.[6] Nearly all states at present, however, will apply the tort regardless of the type of contract involved,[7] provided that it is in force and not illegal,[9] or opposed to public policy.[10] It has been said that most jurisdictions would also protect a contract terminable at will since until it is terminated the contract is a subsisting relation, of value to the plaintiff, and presumably to continue in effect.[11]

In order to maintain an action for "inducing breach of contract", it is essential that the plaintiff allege the following: (1) a valid contract between the plaintiff and a third party (2) of which the defendant had knowledge, and (3) that the defendant intentionally induced the third party not to perform the contract (4) thereby causing the plaintiff damages.[12] It has been held that knowledge of the existing contract is a prerequisite condition of liability for inducing its breach.[13] Although proof of some damage is necessary to the action,[14] when it is clear that there has been damage but its extent cannot be proved, nominal damages may be awarded.[15]

"Interference with contract, which had its origin in 'malice', has remained almost entirely an intentional tort, and liability has not been extended to the various forms of negligence by which performance of a contract may be prevented".[16] No satisfactory reason has been given for this refusal of a remedy in negligence cases.[17] It has been recently recognized that a plaintiff need not allege malice in his complaint, since the tort does not depend on any spite or ill will on the part of the defendant.[18] Bad motives, it has been said, may make a bad act worse, but will not make an act bad which is in essence lawful.[19] For the sake of clarity "malice" could well be

5. See Smith and Prosser, Cases and Materials on Torts 1204 (1952).
6. See Prosser, Torts 978 (1941).
7. *Id.* at 979.
8. *See* Triangle Film Corporation v. Artcraft Pictures Corp., 250 F.2d 981 (2d Cir. 1918).
9. Dr. Miles Medical Co. v. John D. Park & Sons Co., 220 U.S. 373 (1911).
10. Seitz v. Michel, 148 Minn. 474, 181 N.W. 106 (1921).
11. See Carpenter, *Interference With Contract Relations*, 41 Harv. L. Rev. 728, 743 (1928).
12. Childress v. Abeles, 240 N.C. 667, 84 S.E.2d 176, 181 (1954).
13. Sineath v. Katzis, 218 N.C. 740, 12 S.E. 2d 671 (1941).
14. Hodge v. Meyer, 252 Fed. 479 (2d Cir. 1918).
15. *See* Raymond v. Yarrington, 96 Tex. 443, 73 S.W. 800, 804 (1903).
16. See Prosser, Torts 991 (1941).
17. *Id.* at 992 n.26, citing Carpenter *supra* note 11.
18. *See* Avon Products Inc. v. Berson, 135 N.Y.S.2d 867, 870 (1954).
19. Jenkins v. Fowler, 24 Pa. St. 308 (1859).

omitted as a requirement for the tort of inducing breach of contract, for "malice" is proved if it is shown that the defendant with knowledge of the contract intentionally and without justification induced its breach.[20]

When is a defendant acting "without justification" in inducing a breach of contract? That problem has tormented courts in the past, and as business and contractual relationships grow increasingly more complicated it is not unreasonable to assume that it will continue to be troublesome. There are many instances when it is clear that the defendant inducing the breach has justification. It has not been denied, for instance, that a parent can justifiably induce his child to breach a marriage contract.[21] This right is based on public policy making it the parent's duty to guide his children and advise them. Under certain conditions, unions would be justified in inducing employees to breach their employment contract, possibly on the theory that public policy favors the welfare of workers over the integrity of the employer's contract.[22]

An interesting illustration of an instance where a plaintiff was denied recovery because of a superior existing right in the defendant, was the celebrated English case of *Brimelow v. Casson.*[23] In that case, Jack Arnold, the manager of a burlesque troupe, so badly underpaid the girls of the chorus that: ". . . they were forced to eke out a living by plying another and an older trade."[24]

Upon learning of this situation, one Lugg, secretary of the Actors' Association, persuaded the owners of theaters with which the plaintiff had contracts, to cancel them unless higher wages would be paid. In denying the bill to enjoin the defendant from inducing such breaches, the court said in reference to the conduct of the defendant, ". . . but have they in law justification for their acts? . . . these defendants, as it seems to me, owed a duty to their calling and to its members, and, I am tempted to add, to the public, to take all necessary peaceful steps to terminate the payment of this insufficient wage".[25]

While the foregoing examples illustrate circumstances in which the defendant was justified in inducing a breach, other situations

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20. Childress v. Abeles, 204 N.C. 667, 84 S.E.2d 176 (1954).
21. Nelson v. Melvin, 236 Iowa 604, 19 N.W.2d 685 (1945).
22. *See* Imperial Ice Co. v. Rossier, 18 Cal. 2d 36, 112 P.2d 631 (1941).
23. 93 L.J.Rep. (Chan. Div.) 256, 1 Ch. 302 (1924).
24. See Smith and Prosser, Cases and Materials on Torts 1222 (1952).
25. See also MacNeil, Ballad of Brimelow v. Casson in Smith and Prosser, *op. cit. supra* at 1225.

have arisen where the conflicting interests of the plaintiff and the defendant were more equal. In a leading Minnesota case,[26] plaintiff, an automobile dealer, had an agency contract with the manufacturer which was terminable at will upon giving ten days notice. The defendant, a rival automobile dealer in the same town, induced the manufacturer to breach his contract with the plaintiff, and secured for himself the agency contract. In holding that the plaintiff had a cause of action, the court said that while the defendant might be justified in advancing his own business interests, he did not have the right to induce a breach of the plaintiff's contract. The court also stated: "The contract between plaintiff and defendant imposes duties and rights. This contract and the benefits therefrom constituted a property right. An intentional interference therewith by one not having an equal or superior right is wrongful and precipitates liability".[27] Mr. Justice Stone in his very persuasive dissent argued that property rights are on no higher level than personal rights, and went on to suggest that there is no "wrongful interference" unless there has been the purposeful procuring of a breach of a contract by a stranger to it who has no legitimate interest to serve, or having one, uses unlawful means to effect his purpose.[28]

Situations should be distinguished where the breach is *induced* or *procured* by the defendant and where the breach is merely an indirect *result* or is *incidentally caused* by the defendant's actions.[29] For example, if a vendor lowers his prices below that of his competitors it might well be that customers of his competitor would thereby be induced to breach their contracts in order to take advantage of the vendor's offer. In this type of case it could be said that the breach is merely incidentally caused by the person who lowers his price, and to hold him liable would be to contradict the fundamental principles of free enterprise.[30] It has been held that mere disinterested advice which induces an employee to violate his instructions so as to injure his employer will not render the party giving the advice liable in tort.[31] The same is true where a defendant merely advises a party to a contract of his legal rights and thereby induces a breach.[32]

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26. Sorenson v. Chevrolet Motor Co., 171 Minn. 260, 214 N.W. 754 (1927).
27. *Id.* at 756.
28. *Id.* at 757.
29. See Sayre, *Inducing Breach of Contract*, 36 Harv. L. Rev. 663 (1923).
30. *See* Imperial Ice Co. v. Rossier, 18 Cal. 2d 36, 112 P.2d 631 (1941).
31. *Cf.* Coakley v. Degner, 191 Wis. 170, 210 N.W. 359 (1926).
32. Sweeley v. Gordon, 47 Cal. App. 2d 716, 118 P.2d 842 (1941).

Another type of case which should be recognized is that in which a physician induces his patient to breach his employment contract for health reasons, where an attorney in good faith advises his client to breach his contract and subject himself to damages, or even where a trusted friend advises a breach of contract. The distinguishing feature of this type of case apparently is the particular interest of the party inducing the breach as compared with the party whose contract has been violated.[33] It would seem that public policy would favor the giving of uninhibited advice by doctors, lawyers, and friends, and of course the advice they would give could hardly be uninhibited if they were liable for inducing breach of contract. In each case their chief interest is the welfare of the party to whom they are giving the advice, and the contract itself is at most a secondary consideration. Also, these advisors will receive their fee regardless of whether or not their advice is followed; therefore it cannot be said that they caused the breach in an effort to appropriate to themselves that which belongs to another.[34]

Although the overwhelming majority of jurisdictions allow the action, "North Dakota is one of a minority of States holding that an action in tort for wrongfully inducing breach of contract may only be maintained on proof that the breach complained of was induced by direct fraud or coercion on the part of the defendant".[35] The reasoning which supports this stand was set forth in 1911 in the leading case of *Sleeper v. Baker*[36] and was again approved in 1934,[37] in the only other case in which the courts of North Dakota have dealt with the problem.[38] Quoting from an old Kentucky decision[39] the court said: ". . . an action cannot in general be maintained for inducing a third person to breach his contract with the plaintiff; the consequence at law being only a broken contract for which the party to the contract may have his remedy by suing upon it."[40]

It may be true that an action for damages on the contract is a

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33. *Cf.* Legris v. Marcotte 129 Ill. App. 67 (1906) (Defendant induced school authorities to deny plaintiff's children admittance by advising them of plaintiff's diseased condition.)

34. *See* Sorenson v. Chevrolet Motor Co., 171 Minn. 260, 214 N.W. 754, 756 (1927).

35. *See* Voss v. Becko, 192 F.2d 830 (8th Cir. 1951).

36. 22 N.D. 386, 134 N.W. 716 (1911).

37. Wedwick v. Russell-Miller Milling Co., 64 N.D. 690, 256 N.W. 107 (1934); *cf.* Bekken v. Equitable Life Assur. Soc. of United States, 70 N.D. 122, 293 N.W. 200 (1940).

38. See Voss v. Becko, *supra* note 35.

39. Chambers v. Baldwin, 91 Ky. 121, 15 S.W. 58 (1891).

40. Sleeper v. Baker, 22 N.D. 386, 394, 134 N.W. 716, 719 (1911).

sufficient remedy. However, a recent New York case[41] permitting an action for inducing breach of contract reveals an instance when it may not be. In that case plaintiff, a cosmetic manufacturing corporation, had for more than sixty-five years sold its products through sales representatives assigned to specific territories. These agents were authorized to sell only to ultimate consumers, and not to wholesalers or retailers. Defendants, with knowledge of this limitation, induced the plaintiff's sales representatives to sell plaintiff's products to them for the purpose of resale at their pharmacy. The plaintiff in this case would have been hard pressed to recover damages on the contract since it did not know which of its salesmen were committing the breach. Even if it had, it is not unreasonable to argue that the amount of money damages with which a salesman might be able to respond would be inadequate to compensate the corporation for the good will and advertising benefits which were lost. Also if the plaintiff in this situation had known the identity of the salesmen and wished to recover on the contract, it would have been subjected to the hardships of collecting judgments against a number of individuals. It is not inconceivable that there are other situations in which contract damages would be less than adequate. Contract damages are limited to those within the contemplation of the parties,[42] while damages in the case of an intentional tort are awarded for proxmately resulting harm whether or not it was expectable.[43]

Where tort recovery is allowed for inducing breach of contract the problem remains for courts to decide when a party inducing a breach is justified. In deciding this it may be helpful to first answer the question of whether the breach was accidentally caused or whether it was actually procured. When it has been resolved that a breach has been induced, the problem of justification may well be settled by observing the following criteria adopted by the *Restatement of Torts* § 767: "(a) Nature of actor's conduct. (b) Nature of the expectancy with which he interferes. (c) Relation between the parties. (d) Interest sought to be advanced by the actor. (e) Social interest in protecting the expectancy on one hand, and the actor's freedom of action on the other."

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41. See Avon Products Inc. v. Berson, 135 N.Y.S.2d 867 (1954).
42. Restatement, Contracts §330 (1932).
43. Restatement, Torts §915 (1939).